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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

Trends in Chain Store Taxation

In fourteen states today, chain store taxes are graduated according to the number of stores operated within the taxing state, without reference to the total number of stores operated elsewhere. There are four states, however, Florida, Louisiana, Mississippi and South Dakota, where a broader base is employed. There the rate applicable to each store within the taxing state is made dependent upon the total number of stores in the chain everywhere, within and without that state. This broader classification was upheld in 1937 by the Supreme Court of the United States in connection with the Louisiana chain store tax requirements.[1] In November, 1946, the Kentucky chain store tax, which also made use of this broader base, was held invalid by the Kentucky Court of Appeals.[2]

While there has thus been a trend toward a broader base in chain store taxation, the majority of states imposing such taxes still employ bases which have reference solely to the taxpayer's situation within the taxing state. These states are Alabama, Colorado, Georgia, Idaho, Indiana, Iowa, Maryland, Michigan, Montana, North Carolina, South Carolina, Tennessee, Texas and West Virginia. In all but one instance, the fees are graduated according to the number of stores within the state. The exception is Tennessee, where the tax, applicable to stores in excess of one, is at a fixed amount for each one hundred square feet of floor space, or major fraction thereof.

Where but a single store is operated, most of the states subject that store to tax, exceptions being Iowa, Michigan, North Carolina and Tennessee. Maryland may be included as granting a partial exemption, for in that state the lowest bracket applies to the first five stores, where there are two or more such stores operated.

Several states impose levies upon their chain stores, in addition to those measured by the number of stores. Florida levies an additional license tax on inventories; Mississippi counties or municipalities may, if the privilege code is adopted by them, impose upon wholesale or retail stores, a graduated tax measured according to the value of the stock maintained; Maryland levies a traders' license fee graduated according to the stock in trade, and Idaho exacts an additional tax at the rate of $2 per annum for each retail or wholesale store.

[1] *The Great Atlantic & Pacific Tea Company et al. v. Grosjean*, 57 S. Ct. 772, 301 U. S. 412; rehearing denied, 58 S. Ct. 3, 302 U. S. 772.

[2] *Reeves et al. v. Adam Hat Stores, Inc. et al.*, 198 S. W. 2d 789; Kentucky State Tax Reporter, ¶ 41-503.

Domestic Corporations

Delaware.

Interest with respect to appraisal of stock of stockholder dissenting to merger ruled limited to interest at legal rate on appraised value from sixty days after notice of appraisal was given the corporation to time award was paid into court. The Court of Chancery, New Castle County, opened its opinion with these words: "This court must determine whether a dissenting stockholder, whose shares were appraised under Section 61 of our General Corporation Law as it existed prior to the 1943 amendments, is entitled to interest on the appraised value from the effective date of the merger, or from some subsequent date." The court traced the history of the merger, complainant's demands for appraisal of and payment for his stock and for the payment of 6% interest for the period beginning with the date of the recording of the merger plan to the date of payment for the stock. It noted that the statute did not provide for interest, either expressly or by fair implication. The court referred to complainant's contention that the appraisal statute does not purport to cover all the rights which a dissenter may have, and that among these rights not covered by the statute is the right to receive interest on the award from the effective date of the merger. "In order to determine whether or not complainant's contention is meritorious," remarked the court, "it is necessary to examine the relation of the merger statute to the appraisal statute and the relation of both to the 'law' in the absence of statute." After such an examination, the court concluded that the right to interest must be found in the statute and that it was unable to award interest, as demanded, because the appraisal statute not only does not authorize its payment but impliedly denies it. The court did, however, direct the defendant corporation to "pay interest at the legal rate on the appraised value of complainant's stock for the period commencing sixty days after the notice of the appraisal was given the corporation and terminating when the amount of the award was paid into court." *Meade v. Pacific Gamble Robinson Co.*, 51 A. 2d 313. William S. Potter and Richard F. Corroon of Southerland, Berl & Potter of Wilmington, (W. G. McLaren of Seattle, Washington, of counsel), for complainant. Hugh M. Morris and Alexander L. Nichols of Morris, Steel, Nichols & Arsht of Wilmington, for defendant. Commerce Clearing House Court Decisions Requisition No. 368641.

Illinois.

Corporation failing to redeem debenture and refusing to convert it into stock, both in accordance with debenture agreement, ruled subject to damages for breach of contract. Plaintiff was the holder of $1,000 of the principal amount of Five Year Convertible Income Debentures of defendant corporation, payable to bearer on May 1, 1946 at the office of a Chicago trust company. His debenture provided that it might be redeemed by the company at any time before

its maturity and also provided that "the holder of this debenture may at any time prior to redemption hereof, and if not redeemed, at any time prior to the maturity hereof, upon the surrender to the Company of this debenture accompanied by all unpaid interest coupons, convert this debenture into full paid and non-assessable shares of the common stock of the Company, par value $1.00 per share, on the basis of one share of such stock for each $1.00 in principal amount of this debenture." The provisions governing redemption called for publication at least once a week for four consecutive weeks prior to the redemption date in a daily newspaper, whereupon the debenture was to become due and payable. The debenture was to be deemed conclusively redeemed upon such publication and the deposit of the amount necessary with the trust company. Such publication was made between October 23, 1945 and November 23, 1945. In January, 1946, plaintiff, apparently unaware of the publication, presented his debenture to the defendant corporation for conversion into common stock, which was refused because of the publication of the redemption. On the same day, plaintiff presented the debenture to the trust company for redemption and was told payment was refused because money for the redemption had not been deposited with it by the defendant. Plaintiff then presented the debenture to the corporation again for conversion, which was again refused because of the alleged redemption. Plaintiff, in this action, sought damages for breach of contract to convert the debenture into common stock. It was stipulated that the market value of the common stock on the date of refusal was $3.75 per share and plaintiff claimed $3,750 damages. The Appellate Court of Illinois, First District, Second Division, gave judgment for the plaintiff, reversing a judgment against him in the lower court, concluding that "no other reasonable interpretation of the redemption provisions of plaintiff's debenture is possible than that the defendant corporation could not effect a valid redemption unless it made the required publication of notice of its intention to redeem and unless it deposited with its designated paying agent, the Metropolitan Trust Company, prior to November 26, 1945, the redemption date, sufficient funds to pay plaintiff the redemption price of his debenture." The company was regarded as failing to exercise its option in strict conformity with the redemption provisions and held subject to damages and interest. *Mueller v. Howard Aircraft Corporation*, 70 N. E. 2d 203. McCarthy, Toomey & Reynolds (Frank A. McCarthy and John E. Toomey, of counsel), of Chicago, for appellant. Gottlieb, Schwartz & Friedman (H. R. Begley, of counsel), of Chicago, for appellee.

Maine.

Where by-laws provided that second preferred stockholders were entitled to dividends at a fixed rate without qualification, court holds directors' discretion was limited, and that stockholders were entitled as of right to dividends, if earned. Plaintiffs, holders of 1,618 shares out of a total of 2,500 of the second preferred stock of defendant company, on behalf of themselves and all other second preferred

stockholders similarly situated, filed a bill in equity against the company and its directors to compel the payment of accumulated dividends on the stock which on March 31, 1945, the end of the fiscal year, amounted to $42 per share. The sitting justice entered a decree sustaining the bill and ordering the payment of the accumulated dividends as outstanding on the date of the entry of the decree. The corporation had outstanding, in addition to its common stock, three types of preferred stock senior to the second preferred stock held by plaintiffs. At the date of the bringing of the bill in equity, all the dividends on these senior issues had been paid. During the six years prior to the bringing of the bill, the net profits of the company had totaled $1,101,680.72 and the Supreme Judicial Court of Maine, on appeal, remarked that it was apparent "that in each one of these years the preferred dividends were earned and that for the whole period the net earnings were approximately 3½ times the dividend requirements." At the end of the fiscal year, just prior to the time the bill was brought, the company had on hand cash and United States Treasury Savings Notes amounting to $432,361.84 and total current assets of $1,593,177.87 with which to meet total current liabilities of $427,519.26. Prior to the suit, plaintiffs made written demand on the company and directors that all accumulated dividends on their stock should be declared and paid. No answer was received to this demand, and the suit followed. The by-laws contained provisions entitling the second preferred stock to 7% cumulative dividends, payable quarterly, and where there was default in a quarterly dividend, for payment of the deficiency before any dividends were to be declared paid out or set apart for any class of junior stock. The court said: "The question before us is a narrow one. On the facts of this particular case were these plaintiffs entitled as a matter of right to these dividends, or did the directors have a discretion to withhold them?" "Our court has gone farther than have some others in holding that the discretion of directors is limited when the preferred stock contract, as was the case here, provides without qualification that stockholders are entitled to dividends at a fixed rate." The court concluded that the second preferred stockholders, under their contract, were entitled as of right to dividends if they were earned. The appeal was, therefore, dismissed. *New England Trust Co. et al. v. Penobscot Chemical Fibre Co. et al.*, 50 A. 2d 188. Verrill, Dana, Walker, Philbrick & Whitehouse and Brooks Whitehouse of Portland, and Palmer, Dodge, Chase & Davis and Frederick H. Chase of Boston, Mass., for plaintiffs. Ballard F. Keith of Bangor (Ropes, Gray, Best, Coolidge & Rugg, Charles B. Rugg and Warren F. Farr of Boston, Mass., and John J. Phelan, Jr. of North Andover, Mass., of counsel), for defendants.

New Jersey.

Corporation denied right to cancel stock which had not been surrendered under voting trust agreement, where event specified in agreement for its cancellation had not taken place. "The question," said the Court of Chancery of New Jersey, "is whether complainant

is entitled to cancel shares of its capital stock which were deposited under voting trusts in 1927 and which have not been delivered to voting trust certificate holders, although the trusts expired in 1937." Each of three voting trusts, one for each of complainant's three classes of stock, provided that the agreement was to terminate on June 20, 1937. The agreement provided that upon its termination the trustees were to deliver the stock certificates to the holders of the voting trust certificates upon the surrender thereof and for the discharge of the liability of the trustees upon their depositing, at any time subsequent to ten days after the termination of the agreement, with their agent and Depositary of certificates, endorsed for transfer, representing the shares then outstanding, with authority in writing to the Agent and Depositary to deliver the certificates in exchange for voting trust certificates. It was also provided that if, within six years after such deposit, any voting trust certificates had not been surrendered for exchange, the Agent and Depositary was to deliver the shares of stock on deposit at that time to the company and that all such shares were to be forthwith cancelled. The complainant company contended that the latter provision had become operative and that it had the right to cancel shares of a market value of about $200,000 represented by voting trust certificates which had never been surrendered by the holders thereof. The court, however, ruled against this contention, finding, after an examination of the facts, that the event specified in the agreement, upon which the company could cancel the stock, had not occurred. It found that the terms of the contract providing for the forfeiture of the shares were unambiguous to the extent that the forfeiture would not take place until six years after the trustees, in their discretion, decided to terminate their responsibility for delivering the shares to the beneficiaries and put their decision into effect, and that they could not take such action until ten days after the expiration of the trust. The court found nothing to indicate the trustees had terminated their responsibility as permitted by the agreement, and that, until this action was taken, the six year period leading to the cancellation of the shares, would not begin. *United States Leather Co. v. McLeod et al.*, 51 A. 2d 11. Pitney, Hardin, Ward & Brennan (by Waldron M. Ward) of Newark, for complainant. Whiting & Moore (by Ira C. Moore, Jr.) of Newark, for certain defendants. John D. McMaster, for defendant Harris, Upham & Co. Furst & Furst (by George Furst and Louis Kraemer) of Newark, for defendant Sidney D. Redmond. Smith & Slingerland (by David Trauth) of Newark, for certain defendants.

New York.

Petitioner, still a stockholder of record, although assignments, unrecorded, had been made on stock certificates, ruled entitled to common law and statutory rights to inspect corporate books. Petitioner, as a stockholder, filed an application for an order permitting an inspection and the taking of copies from the stock book, minute books, and all books of account and records of respondent company by petitioner and his attorneys and an accountant to be designated

by him at such time and place as might be set by the court. Respondents moved to dismiss the petition on the ground that petitioner was not a stockholder of record, having assigned and transferred his shares to one Minnie Isenberg and stating that no reassignment of the stock had been made to the petitioner. An examination of the stock book of the company showed that the original shares had been issued to the petitioner in 1915 and that there was no record of any transfer. The New York Supreme Court, Special Term, Queens County, Part I, noted that Section 10 of the Stock Corporation Law provides that the stock book is to be presumptive evidence of the facts therein so stated in favor of the plaintiff in any action or proceeding against the corporation or any of its officers, directors or stockholders and concluded, from the evidence, that petitioner was a stockholder of the corporate respondent and entitled to his common law and statutory rights to inspect the books of the company at a proper time and place. *Schachner v. G. Taus & Sons, Inc. et al.*, 67 N. Y. S. 2d 337. Hein & Bradie of Far Rockaway, for petitioner. Abner H. Pike of Rockaway Beach, for respondents.

Foreign Corporations

New Jersey.

Service of process made upon employee of foreign corporation, not doing business in New Jersey, where employee merely took orders for forwarding to another state, set aside. Defendant was a foreign corporation having its principal place of business in Philadelphia, Pennsylvania, where the cause of action in a tort action was claimed to have arisen. Service of process, the validity of which was sought to be determined by the defendant corporation, was made upon it by serving an employee of defendant, who received telephone orders at her private apartment in Atlantic City, New Jersey. These orders were transmitted to defendant corporation in Philadelphia, where they were accepted or rejected. The employee had no authority to accept or reject the orders. If accepted, orders were delivered to the parties, upon collection of the amount due, or charged to the accounts in Philadelphia. "It is argued," said the Supreme Court of New Jersey, Camden County, "that the provisions of R. S. 2:26-44, N. J. S. A., do not sustain service of process in this case. The first paragraph provides for service on any officer, director, agent, clerk or engineer, ticket or freight agent of the corporation, or at its office, depot or usual place of business in this State. Plaintiffs argue that the second paragraph of said section applies. This reads: 'If there are none of the above-named persons resident within this state, and if there is no office, depot or place of business within this state, the process may be served on any motorman, conductor or servant of the corporation within this state and acting in the discharge of his duties.' It has repeatedly been held that this provision of the statute applies only when the corporation is held to be doing business in this state." The court concluded that the depositions disclosed that de-

fendant was not doing business in the state and that the service made was not valid and was to be set aside. *Wolfer et al. v. Lit Bros.*, 51 A. 2d 15. Samuel P. Orlando of Camden, for the rule. Leighton J. Heller of Camden, opposed.

New York.

Dissolved Delaware corporation held not an indispensable party to derivative action involving claim against directors. "This stockholders' derivative action against directors of a Delaware corporation," said the Court of Appeals of New York, "was commenced after the corporation had been dissolved for non-payment of taxes; although temporarily revived during part of the time during which the present action was in progress, the corporation thereafter forfeited its charter for a second time, and it is not now, and for some time has not been, a body corporate. The evidence clearly establishes defendants' breach of their duty as directors. The sole question of consequence upon this appeal is whether the dissolved corporation is an indispensable party and whether its absence as a party defendant is fatal to the judgment rendered." The directors dominated and controlled the board; they were residents of New York; the corporation's business was done there and corporate meetings held there. "Beyond that," remarked the court, "the fictitious corporate person disappeared upon dissolution, and whatever assets it might have had at that time belonged thereafter, in equity at least, to the stockholders who are thus the equitable owners of this claim against the defendants." In affirming a judgment for plaintiffs, the court concluded: "When this action was commenced, there was no corporation in existence, either by statutory provision for continuation after dissolution, or otherwise. Being a nonentity, therefore, the defunct corporation could not be made either party plaintiff or defendant. Its subsequent resuscitation for some purpose—which is nowhere clearly described—was not such a rebirth for all purposes as should defeat a meritorious cause of action commenced in compliance with logical procedure." *Weinert et al. v. Kinkel et al.*, 71 N. E. 2d 445, 296 N. Y. 151. Theodore Kiendel, William R. Meagher, Alfred L. Becker and Howard S. Tuthill of New York City and James O. Moore of Buffalo, for appellant. Frank G. Raichle of Buffalo, for respondents.

Taxation

Mississippi.

Unlicensed foreign pipe line company, engaged in interstate commerce, with approximately 135 miles of pipe in state, held subject to franchise tax. "Appellee, a Delaware corporation, owns and operates a natural gas pipe line running from the Monroe gas field in Louisiana to Memphis in the State of Tennessee, and beyond. The pipe line enters Mississippi at a point a few miles south of Greenville, and

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It is that *completeness* of service and that co-ordination of all its parts into one protective system that distinguishes the Corporation Trust system from all other methods of statutory representation.

runs thence, in this State, towards the north in a general direction parallel with the Mississippi River, and enters Tennessee at a point almost directly south of Memphis." There were approximately 135 miles of the pipe line in Mississippi, where there were two compressing stations. Appellee stipulated it was not engaged in any intrastate business in the state and that its business, as it concerned the state, was interstate solely and exclusively. It had only one customer in the state, to which it delivered gas wholesale, under a contract made in another state. The company was not qualified as a foreign corporation, had no agent for the service of process, maintained no office in the state, and had no employes or representatives in the state other than those necessary to maintain the pipe line and its related facilities. The state demanded a franchise tax, which the company resisted on the ground that as it did no intrastate business whatever and was not qualified to do intrastate business, no tax could be, levied against it by the state, other than ad valorem taxes, and that any other tax, particularly a franchise tax, would be to tax interstate commerce. The Mississippi Supreme Court, in ruling that the company was subject to the tax, observed that the franchise tax was not upon "doing business" as that term is ordinarily understood in the purely commercial sense, but, as defined in the statute, included "every act, power or privilege exercised or enjoyed in this state, as an incident to, or by virtue of the powers and privileges acquired by the nature of the organization." The court continued: "It is to be seen that there is no attempt to tax interstate commerce as such, but the levy is an exaction which the State requires as a recompense for its protection of lawful activities carried on in this State by the corporation, foreign or domestic, activities which are incidental to the powers and privileges possessed by it by the nature of its organization—here the local activities in maintaining, keeping in repair, and otherwise in manning the facilities of the system throughout the 135 miles of its line in this State." The court regarded the case as being reduced to two questions "(1) Are the incidental local activities carried on by appellee corporation in this State substantial in nature and extent,—the active maintenance, supervision and repair in this State of 135 miles of pipe line and its related equipment? An affirmative answer to that question is obvious. (2) Does the franchise tax here demanded amount to enough to have any substantial effect to block or impede the free flow of commerce, or is it at all out of reasonable proportion to the services and protection which must be furnished by the State in and about the stated local activities? The franchise tax demanded is approximately $3,400 per annum, whereas the ad valorem taxes are approximately $82,000 a year, whence the obvious answer to this last question must be in the negative." *Stone v. Memphis Natural Gas Co.*,* Mississippi Supreme Court, February 24, 1947. Commerce Clearing House Court Decisions Requisition No. 369244; 29 So. 2d 268.

* The full text of this opinion is printed in the **State Tax Reporter, Mississippi**, page 1508.

Montana.

Foreign motor transportation company, engaged in interstate commerce, held subject to Motor Carriers Act requirements calling for payment of fees and obtaining of state permit. "This controversy," said the Montana Supreme Court, "involves the question as to what extent a state may impose burdens in the way of licenses and taxes upon motor carriers engaged in interstate commerce for operating their vehicles over the highways of the state. Such exactions are imposed upon the presumption that the state owns the highways within its borders, and the exactions are imposed as compensation for their use, and the revenue derived therefrom shall be expended to build, maintain and supervise such highways." The Board of Railroad Commissioners obtained a restraining order in the lower court and the company for some months discontinued operations in the state, but later filed a bond with the Board and the Board made an order permitting the company to continue operations pending determination of the issues involved. The company was engaged in the motor transportation of goods from one state to another for hire. It did not transport goods from one point to another in the same state. It transported goods from other states to a point in Montana and passed through the state to a point in a third state. The position of the Board was that the company might not use the state highways until it applied to the Board and was granted a permit and had paid the taxes and fees imposed by statute. The company contended the Motor Carriers Act, imposing fees, was inapplicable to interstate commerce and, if applied to the company, violated the equal protection clause of the Fourteenth Amendment to the Federal Constitution and Sections 1 and 11 of Article XII of the Montana Constitution. The effect of the judgment of the trial court was to overrule this contention of the company and to enjoin the Board from exacting a tax of ½ of 1% of the company's gross revenue, with a minimum of $15 for each vehicle operated by it in Montana. Both the Board and the company appealed from that part of the judgment adverse to it. The Montana Supreme Court affirmed that part of the judgment of the lower court restraining the company from operating its vehicles over the Montana highways until it had paid certain fees required under Sec. 3847.16 of the Act, but vacated the order restraining the Board from enforcing the exactions under Sec. 3847.27. Judgment was, therefore, adverse to the company. *Board of Railroad Commissioners v. Aero Mayflower Transit Co.,** Montana Supreme Court, September 19, 1946. Paul T. Keller and Edwin S. Booth, Jr., of Helena, for appellants. Toomey, McFarland & Hall and Edmond G. Toomey of Helena, for respondents. Commerce Clearing House Court Decisions Requisition No. 359356. *(Appeal filed in the Supreme Court of the United States, February 10, 1947; Docket No. 1003. Jurisdiction noted, March 10, 1947.)*

* The full text of this opinion is printed in the **State Tax Reporter, Montana,** page 5401.

New York City.

City gross receipts tax held invalid by Supreme Court of the United States as applied to the business of stevedoring for interstate and foreign commerce. The respondent corporations resisted the payment of the New York City business tax, measured by gross receipts, as applied to their business of general stevedoring, over a period of several years. For the purpose of the litigation, the business of the respondents was considered as consisting only of taking freight from a convenient place on the pier or lighter wholly within the territorial limits of New York City and storing it properly for safety and for handling in or on the outgoing vessel alongside, or of similarly unloading a vessel on its arrival. The vessels moved in interstate or foreign commerce, without a call at any other port of New York. Writs of certiorari to the Supreme Court of the United States were sought and granted on the issue whether or not this tax on the respondents constituted an unconstitutional burden on commerce. The Court of Appeals of New York had ruled, without opinion, 294 N. Y. 906, 908, that the local laws imposing this tax, as applied to the taxing of receipts of the respondent corporations from such stevedoring operations were in violation of the "interstate commerce" clause of the Federal Constitution, by affirming a determination of the State Supreme Court, Appellate Division, 269 App. Div. 685, annulling the imposition on the authority of *Puget Sound Stevedoring Company v. Tax Commission*, 302 U. S. 90, where a state tax on gross receipts, undistinguishable from that laid by New York City, was held invalid as applied to stevedoring activities exactly like those presently before the court. (The Corporation Journal, December, 1945, page 52.) The city, while recognizing the force of the *Puget Sound* case as a precedent, argued that subsequent holdings of the court had indicated that the reasons which underlay that decision were no longer controlling in judicial examination of the constitutionality of state taxation of the gross proceeds derived from commerce, subject to federal regulation. The Supreme Court considered whether or not the loading and unloading was to be regarded as distinct enough from the commerce to permit the tax on the gross receipts. It said: "Stevedoring, we conclude, is essentially a part of the commerce itself and therefore a tax upon its gross receipts or upon the privilege of conducting the business of stevedoring for interstate and foreign commerce, measured by those gross receipts, is invalid. We reaffirm the rule of *Puget Sound Stevedoring Company.*" *Joseph et al. v. Carter & Weekes Stevedoring Company; Joseph et al. v. John T. Clark & Son,** Supreme Court of the United States, March 10, 1947; Docket Nos. 29 and 30. Commerce Clearing House Court Decisions Requisition No. 369809; 67 S. Ct. 815.

* The full text of this opinion is printed in the **State Tax Reporter**, New York, page 28,002.

Appealed to the Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ALABAMA. Docket No. 1025. *Smith v. Hydro Gas Co. of West Florida, Inc. et al.*, 157 F. 2d 809. (The Corporation Journal, March, 1947, page 286.) Service of process—withdrawn foreign corporation—cause of action arising in another state subsequent to withdrawal. **Petition for certiorari filed, February 13, 1947. Certiorari denied, March 31, 1947.**

MONTANA. Docket No. 1003. *Board of Railroad Commissioners v. Aero Mayflower Transit Co.*, Montana Supreme Court, September 19, 1946. (The Corporation Journal, May, 1947, page 333.) Motor carriers—contract carrier in interstate commerce—imposition of state tax upon carrier. **Appeal filed, February 10, 1947. Jurisdiction noted, March 10, 1947.**

NEW YORK. Docket Nos. 29-30. *Carter & Weekes Stevedoring Co. v. McGoldrick et al.; John T. Clark & Son v. McGoldrick et al.*, 294 N. Y. 906, 908. (The Corporation Journal, December, 1945, page 52.) New York City business tax—applicability to stevedoring activities within city limits. **Petition for certiorari filed, October 17, 1945. Certiorari granted, November 19, 1945. Argued, March 1, 1946. Restored to the docket and assigned for reargument before a full bench, April 22, 1946. Reargued, November 12, 1946. Affirmed, March 10, 1947.** (See page 334.)

* Data compiled from **CCH U. S. Supreme Court Docket, 1946-1947.**

Regulations and Rulings

KENTUCKY—Where there is an increase in the authorized capital stock to a total of 100,000 shares, the organization tax would be one cent a share on the first 20,000 shares and one-half cent a share on the other 80,000 shares, credit being allowed for the amount previously paid as an organization tax. (Opinion of the Attorney General to the Chief Corporation Clerk, Secretary of State's Office, State Tax Reporter, Kentucky, ¶ .403.)

MISSOURI—Intangible personal property owned by religious, educational and charitable institutions is subject to the ad valorem tax on intangible personal property. (Opinion of the Attorney General to the Director of Revenue, State Tax Reporter, Missouri, ¶ 29-004.)

NEW MEXICO—The Corporation Commission, in arriving at a conclusion with regard to engaging in or doing business in the state, considers the nature of the business, the object or purpose for which incorporated, and acts done by the corporation in carrying out that purpose. In addition, it is necessary that the corporation exercise its corporate franchise before it becomes liable for franchise taxes. (Opinion of the Attorney General to the State Corporation Commission, State Tax Reporter, New Mexico, ¶ 4-002.)

NORTH CAROLINA—A foreign corporation selling products through an "independent contractor" would be doing business in the state for income tax purposes. (Opinion of Attorney General to Commissioner of Revenue, State Tax Reporter, North Carolina, ¶ 15-026.)

NORTH DAKOTA—Where a foreign corporation has made application for license to sell its stock in the state, the stock has been approved, and such license has been granted, the corporation is not required to qualify under the foreign corporation act of North Dakota. (Opinion of Attorney General to Secretary, State Securities Commission, State Tax Reporter, North Dakota, ¶ 2-012.)

OHIO—Under lump sum contracts, the contractor was the consumer of the materials which he purchased and fabricated and installed in buildings and other structures and cannot be legally assessed for such materials as a vendor, but the sales price to him of such materials is taxable. (Ruling, Ohio Board of Tax Appeals, Ohio State Tax Reporter, ¶ 69-007.)

Where no records are kept of the amount of individual sales of 9¢ or less, no deductions of such sums from a vendor's total sales will be permitted in connection with the vendors' excise tax imposed by Section 5546-12a, G. C. (Ruling, Ohio Board of Tax Appeals, Ohio State Tax Reporter, ¶ 69-013.)

OKLAHOMA—The Oklahoma Tax Commission will probably follow the Treasury's ruling that liquidated damages for non-productive working time, necessarily spent by employees on a company's premises, are deductible by the employer in the years such services were rendered. (Letter, Tax Commission, Oklahoma State Tax Reporter, ¶ 16-037.)

Some Important Matters for May and June

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Payment due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due on or before June 1.—Dominion Companies.

FLORIDA—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

IOWA—Report of Transfers of Stock due on or before July 1.—Domestic Corporations.

KENTUCKY—Statement of Existence due in June.—Foreign Corporations.

Annual Verification Report as to Process Agent due in June.—Domestic and Foreign Corporations.

LOUISIANA—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MICHIGAN—Report of Unclaimed Moneys, Securities, Credits, etc., due on or before June 30.—Domestic and Foreign Corporations.

MISSOURI—Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Franchise (Occupation) Tax due on or before July 1.—Domestic Corporations.

NEVADA—Annual List of Officers and Designations and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

NEW MEXICO—Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3-CT-Article 9A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations, Holding Companies and Investment Trusts.

OREGON—Annual Report due during June.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due on or before June 1.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Report due between May 1 and June 1.—Domestic Corporations.

TENNESSEE—Annual Privilege (Franchise) Tax Return and Payment, Annual Report and Tax and Excise Tax Report and Tax due on or before July 1.—Domestic and Foreign Corporations.

Report of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second Installment of Income Tax due June 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VIRGINIA—Income Tax due June 1.—Domestic and Foreign Corporations.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal place of business or chief works are located in other states.

WYOMING—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

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THE CORPORATION TRUST COMPANY
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THE CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

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